

SPECIAL ISSUE

Makueni County Gazette Supplement No. 2 (Bills No. 2)



REPUBLIC OF KENYA

**MAKUENI COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2017

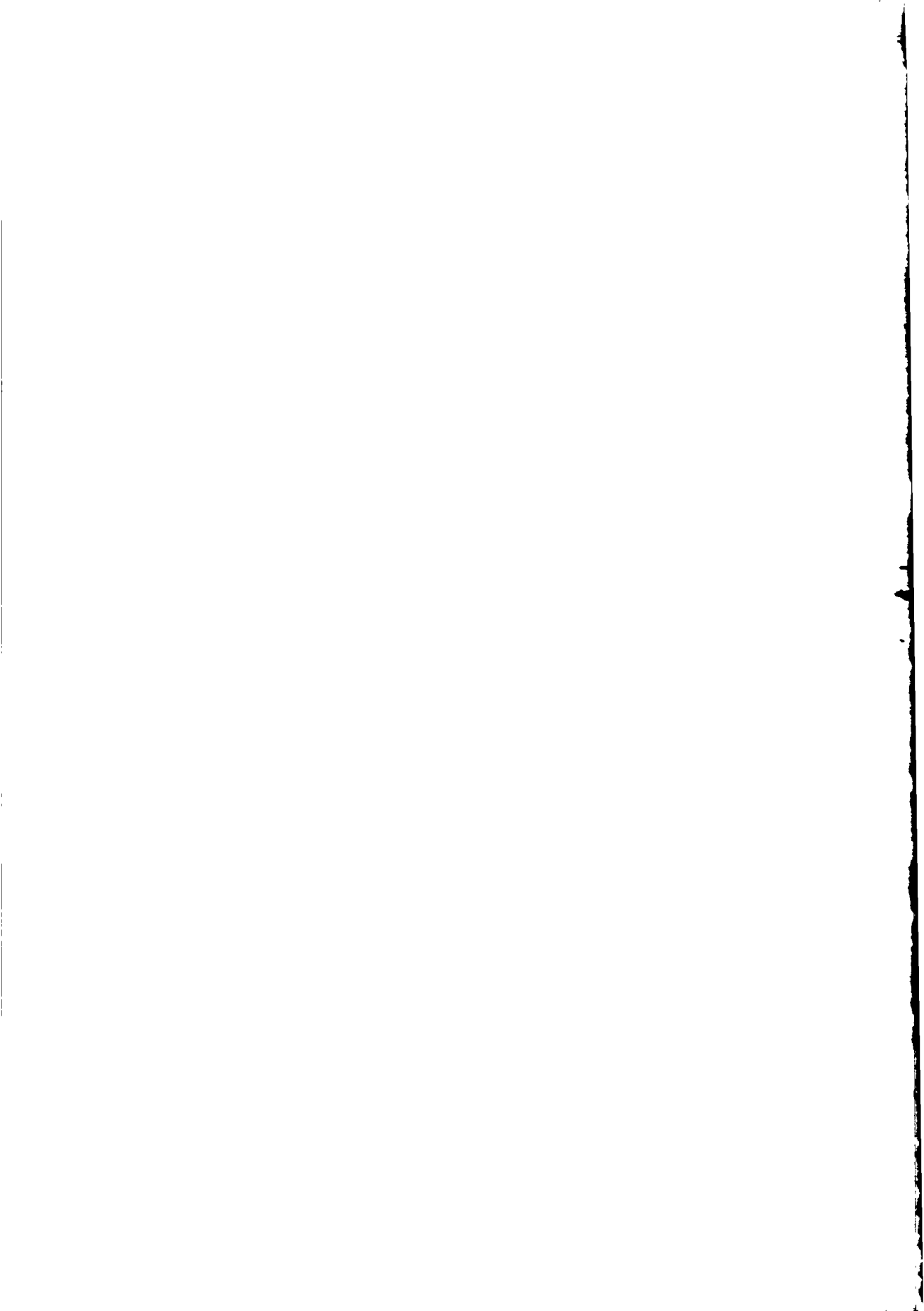
MAKUENI, 13th March, 2017

CONTENT

Bill for Introduction into the County Assembly of Makueni—

PAGE

The Makueni County Co-operative Society Bill, 2017..... 1



**THE MAKUENI COUNTY CO-OPERATIVE SOCIETIES BILL,
2017**

ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objectives.
- 4—Application.

PART II—ADMINISTRTION AND OFFICES

- 5—Role of the County Executive Committee Member.
- 6—Director and Other officers.

PART III—REGISTRATION OF CO-OPERATIVE SOCIETIES

- 7—Registration of co-operative societies.
- 8—Eligibility for registration of a co-operative society.
- 9—Procedure for registration.
- 10—Provisional registration.
- 11—Appeal against refusal to register.
- 12—Protection of the name “co-operative”.
- 13—Evidence of registration.
- 14—Co-operative society to be body corporate.
- 15—By-laws to bind members of co-operative societies.
- 16—Amendments of by-laws.

PART IV—RIGHTS AND LIABILITIES OF MEMBERS

- 17—Qualification for membership.
- 18—Limitation of holding share capital.
- 19—Membership subject to authorization by annual general meeting.
- 20—Membership of co-operative society.
- 21—Limitation of membership to one society.
- 22—Voting rights of members.
- 23—Transfer of shares.

24—Rights of members.

25—Member's rights *vis-a-vis* the co-operative society.

PART V—DUTIES OF A CO-OPERATIVE SOCIETIES

26—Registered address of co-operative society.

27—Society to keep a copy of the Act and by-laws at registered office.

28—Estimates of income and Expenditure.

29—Account and Audit.

30—Production of books and Other documents.

PART VI—MANAGEMENT OF CO-OPERATIVE SOCIETIES

31—General meetings.

32—Membership and Powers of the Committee.

33—Duties of the Committee.

PART VII—AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

34—Amalgamation of co-operative societies.

35—Division of co-operative societies.

PART VIII—RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

36—Society to have charge over member's produce.

37—Fines for violation of by-laws.

38—Society to have first charge over debts, assets, etc. in certain cases.

39—Society to have first charge over members' share.

40—Failure to remit the sum deducted.

41—Member's share not subject to attachment.

42—Liability of past members.

43—Liability of deceased members.

44—Transfer of share or interest of deceased members.

45—Evidence of member's interest in society.

46—Restriction on production of society's books.

PART IX—PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

- 47—Application of society’s property and Funds.
- 48—Restriction on giving loans.
- 49—Restriction on borrowing.
- 50—Investment of society’s funds.
- 51—Declaration and Payment of bonus.
- 52—Maintenance of reserve fund.
- 53—Distribution of net balance.

PART XI—CHARGES BY CO-OPERATIVE SOCIETIES

- 54—Creating charge over society’s property.
- 55—Charge to comply with applicable law.
- 56—Charges to be registered with the Director.
- 57—Register of charges.
- 58—Certificate of satisfaction of charges.
- 59—Receiver to give notice of his appointment.
- 60—Society to keep copy of instruments of charge at registered office.
- 61—Society to keep register of particulars of charges.
- 62—Right of members and Creditors to inspect register of charges.

PART XII—INQUIRY, INSPECTION AND SURCHARGE

- 63—Inquiry by Director.
- 64—Expenses of Inquiry.
- 65—Routine inspection.
- 66—Procedure for dissolution.
- 67—Cancellation of Registration.
- 68—Effects of Cancellation.
- 69—Application of Companies Act.
- 70—Appointment of Liquidator.
- 71—Powers of Liquidator.
- 72—Liquidation account of societies.

73—Powers of Director during liquidation.

74—Appeal against order of Liquidator or Director

75—Enforcement of Orders.

76—Institution of Winding up proceedings.

77—Power to restrain convicted persons from being officers of society.

PART XIV—SETTLEMENTS OF DISPUTES

81—Disputes.

82—Establishment, Functions, Proceedings and Operation of Tribunal.

PART XV—GENERAL PROVISIONS

83—Remuneration of Officers and Members of society.

84—Restriction on use of word “co-operative”.

85—County Co-operative Development Fund.

86—Regulations.

87—Exemption.

88—Offences.

89—Savings.

**THE MAKUENI COUNTY CO-OPERATIVE SOCIETIES BILL,
2017**

A Bill for

AN ACT of the County Assembly of Makueni County to give effect to section 7 (e) of Part II of the Fourth Schedule of the Constitution; to make provisions relating to the formation, registration and regulation of cooperative societies and for purposes connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Makueni County Co-operative Societies Act, 2017.

Interpretation

2. In this Act, except where the context otherwise requires—

“agricultural produce” means any produce or article produced or obtained by the work or industry of members of a co-operative society or marketed by a co-operative society, whether the produce be of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise;

“apex society” means a national umbrella co-operative society whose membership is open to all co-operative societies and entire co-operative movement, to promote co-operative development and represent the interests of co-operative societies locally and internationally;

“bonus” in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s volume of business with the society bears to the total volume of business done by the society;

“by-laws” means the by-laws made by a society and registered under this Act and includes any registered amendment of such by-laws;

“capital” means the permanent members equity in the form of common stock and includes all disclosed reserves, retained earnings, grants or donations;

“deposit-taking business” means—

- (a) a Sacco business in which the person conducting the business holds himself out as accepting deposits on a day- to-day basis; and

- (b) any other activity of the Sacco business which is financed, wholly or to a material extent, by lending or extending credit for the account and at the risk of the person accepting the deposit, including the provision of short-term loans to members;

“director” means the County Director for Co-operative Development appointed under section 6 and includes any person on whom any of the powers of the Director have been conferred in accordance with this Act;

“committee” means the governing body of a co-operative society to whom the management of its affairs is entrusted, and includes a board of directors;

“contributor” means a person liable to contribute to the assets of a co-operative society in the event of its being wound up and for the purposes of any proceedings for determining and before the final determination of the persons who are to be deemed contributors, includes any person alleged to be a contributor;

“co-operative society” means a society registered under section 7 and includes a co-operative society registered in another county and licensed to operate within the county;

“co-operative union” means a co-operative society whose membership is restricted to primary societies;

“date of dissolution” means the date on which the Director’s order cancelling the registration of a co-operative society takes effect;

“deposit” means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the society to receive it at the risk of the society receiving it;

“dividend”, in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s share capital bears to the total share capital of the society;

“limited liability” means limited by shares or limited by guarantee, according to the nature of the liability prescribed by the by-laws of the cooperative society;

“member” includes a person or a co-operative society joining in the application for the registration of a society, and a person or co-operative society admitted to membership after registration in accordance with the by-laws;

“executive committee member” means the County Executive Committee Member for the time being responsible for co-operative societies;

“officer” includes a chairperson, vice-chairperson, secretary, treasurer, committee member, employee or any other person empowered under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society;

“personal representative” means any person who, under law or custom, is responsible for the administration of the estate of a deceased person;

“primary society” means a co-operative society whose membership is restricted to individual persons;

“share” means the amount represented by a member’s portion in the equity of a society as a co-owner;

“special general meeting” means a general meeting, other than an ordinary general meeting, of which at least fifteen clear days written notice of the resolution and of the date, time and place of the meeting has been given to each member;

“special resolution” means a resolution passed by two thirds of the members present and voting at a general meeting of a society;

“supervisory committee” means an oversight committee elected at a general meeting;

“tribunal” means the Co-operative Tribunal established under section 77 of the Co-operative Societies Act (Cap 490) Laws of Kenya;

“winding up” means all proceedings subsequent to the dissolution of a co-operative society.

Object and Purpose

3. The object and purpose of this Act is to provide the legislative and institutional framework to facilitate the—

- (a) promotion of trade and development of co-operative societies pursuant to section 7 (e) of Part II of the Fourth Schedule to the Constitution;
- (b) formation, registration and licensing of co-operative societies;
- (c) promotion of co-operation between the national and county governments in matters relating to co-operative societies; and
- (d) promotion of corporate governance of co-operative societies.

Application

4. (1) Subject to sub-section (2), this Act shall apply to—
- (a) all co-operative societies operating within the county.
 - (2) This Act shall not apply to—
 - (a) deposit-taking Sacco's to the extent the Sacco Act applies. *(insert any other forms of co-operative societies to which this Act shall not apply).*
 - (3) Any co-operative society registered from outside the county and it intends to operate within the county will be required to seek for approval to operate from the Director in writing.
 - (4) All country-wide Saccos operating within the county will be required to notify the Director of their presence.

PART II—ADMINISTRATION AND OFFICES**Role of the County Executive Committee Member**

5. The Executive Committee Member shall be responsible for the growth and development of co-operative societies in the County, and shall in particular—

- (a) develop and oversee the implementation of county co- operative societies policies and strategies;
- (b) promote good governance in co-operative societies;
- (c) provide liaison with the national government on matters relating to co-operative societies;
- (d) advise the County on matters relating to the co-operatives;
- (e) authorize the cancellation of licenses or de-registration of co-operative societies, subject to the provisions of this Act;
- (f) issue guidelines and regulations to facilitate growth and regulation of cooperative societies; and
- (g) perform such other functions as may be assigned to the office under this Act.

Director and Other officers

6. (1) There shall be a county Director for co-operative development whose office shall be an office within the county public service.

(2) There shall be such number of officers, as may be necessary to assist the Director in the administration of this Act.

(3) The Director shall be responsible to the County Executive for the growth, development and regulation of co-operatives societies and shall in particular—

- (a) process application for registration of co-operatives;
- (b) supervise and inspect co-operative societies to ensure compliance with the law;
- (c) maintain the register of co-operative societies within the county;
- (d) supervise dissolution, division or amalgamation of a co-operative societies;
- (e) perform such other functions as may be assigned to the office under this Act or by the County Executive Committee Member.

PART III—REGISTRATION OF CO-OPERATIVE SOCIETIES

Registration of Co-operative Societies

7. (1) Subject to the provisions of this Act, a society which has as its objects—

- (a) the promotion of the welfare and economic interests of its members; and
- (b) has incorporated in its by-laws the following co-operative principles—
 - (i) voluntary and open membership;
 - (ii) democratic member control;
 - (iii) economic participation by members;
 - (iv) autonomy and independence;
 - (v) education, training and information;
 - (vi) co-operation among co-operatives; and
 - (vii) concern for community in general.

may be registered by the Director as a co-operative society under this Act with or without limited liability.

(2) A co-operative society may be registered under this Act either as—

- (a) limited liability cooperative society which shall be a co-operative society limited by shares; or

- (b) unlimited liability co-operative society which shall be a society where members' liability is limited to the extent set out by the by-laws.
- (3) A co-operative union or an apex society may only be registered with limited liability.
- (4) Two or more co-operative societies may apply to amalgamate and form one co-operative society subject to compliance with the regulations on amalgamation prescribed in accordance with this Act.
- (5) A co-operative society may apply to divide into two or more co-operative societies subject to compliance with the prescribed regulations under this Act.

Eligibility for registration of a co-operative society

8. For a society to be registered under this Act, it shall—

- (a) consist of at least fifteen persons all of whom shall be qualified for membership of the co-operative society under section 14, in the case of a primary society; or
- (b) have at least two registered societies as its members, in the case of a co-operative union.

Procedure for registration

9. (1) An application to register a society shall be made to the Director in the prescribed form, and be signed—

- (a) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14;
- (b) in the case of an apex society, by a person duly authorized in that behalf by each co-operative society or co-operative union, as the case may be, who are members thereof.

(2) The application shall be accompanied by four copies of the proposed by-laws of the society in English and the persons on whose behalf the application is made shall furnish such information with regard to the society as the Director may require.

(3) The Director shall, within two months from the date of receipt of an application—

- (a) register the society; or
- (b) reject the application and give written reasons for rejection.

Provisional registration

10. (1) If the Director is not satisfied that a society has complied with this Act, or is of the opinion that further steps need to be taken by the persons on whose behalf the application for registration is made in order to comply with this Act, the Director may in his discretion provisionally register the society for such period, not exceeding one year, and subject to its compliance with such terms and conditions and provisions, as the Director may specify in writing.

(2) A provisional registration shall entitle the society to operate as a co-operative society and to operate as a body corporate.

(3) A society which is provisionally registered shall cause the fact that it is provisionally registered to be stated in legible Roman letters in all billheads, letters, papers, notices, advertisements and other official publications of the society, and on a sign board in a conspicuous position outside any premises in which it operates.

Appeal against refusal to register

11. (1) A co-operative society may appeal to the Executive Committee Member against the decision of the Director refusing to register the society.

(2) Any party aggrieved by the decision of the Executive Committee Member under subsection (1) may appeal against the decision to the High Court within thirty days.

Protection of the name “co-operative”

12. (1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the Director, to mislead the members of the public as to its identity.

(2) The word “co-operative” shall form part of the name of every co-operative society, and the word “limited” shall be the last word in the name of every co-operative society having limited liability.

Evidence of Registration

13. (1) A certificate of registration or of a provisional registration signed by the Director shall be conclusive evidence that the society therein mentioned is duly registered or provisionally registered, unless it is proved that such registration of the society has been cancelled or has been terminated.

(2) The certificate of registration bearing the number and date of registration shall be displayed at the head office of every co-operative society.

(3) A copy of the by-laws of a co-operative society or of an amendment of such by-laws certified by the Director shall be *prima facie* evidence for all purposes of the registration of such by-laws or such amendment.

(4) A document purporting to be signed by the Director shall be presumed to have been signed by him until the contrary is proved.

Cooperative society to be body corporate

14. (1) Upon registration, every society shall be a body corporate and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing, acquiring, or otherwise holding, and or disposing of movable and immovable property;
- (c) entering into contract;
- (d) borrowing money; and

(2) There shall be a county register of Co-operative Societies into which shall be entered particulars of all registered co-operative societies including—

- (a) the name of co-operative society;
- (b) physical address of its offices;
- (c) nature of business;
- (d) number of members; and
- (e) such other particulars as the director may determine.

(3) A co-operative society registered under this Act may establish a branch or other offices other than its registered headquarters and file a notification of such establishment with the Director subject to payment of requisite fees.

By-laws to bind society and members

15. The by-laws of a co-operative society bind the co-operative society and the members.

Amendment of by-laws

16. (1) A co-operative society may, subject to this Act, amend its by-laws.

(2) No amendment of the by-laws of a co-operative society shall be valid until the amendment has been registered under this Act by forwarding to the Director a copy thereof in the prescribed manner.

(3) The Director may cancel the amendment if he discovers that an amendment was effected and registered through misrepresentation or concealment of a material fact.

(4) An amendment which changes the name of a co-operative society shall not affect any right or obligation of that society or its members.

(5) When the Director registers an amendment of the by-laws of a co-operative society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section, “amendment” includes the making of a new by-law and the variation or revocation of a by-law, but excludes the variation of the registered address of a co-operative society where this forms a part of the by-laws of such a society.

PART IV – RIGHTS AND LIABILITIES OF MEMBERS

Qualification for membership

17. A person other than a co-operative society shall not be qualified for membership of a co-operative society unless—

- (a) the person has attained the age of eighteen years;
- (b) the person’s employment, occupation or profession falls within the category or description of those for which the co-operative society is formed; and
- (c) the person is resident within, or occupies land within, the society’s area of operation as described in the relevant by-law.

Limitation of holding share capital

18. No member, other than a co-operative society, shall hold more than one-fifth of the issued and paid-up share capital of any co-operative society.

Membership subject to authorization by annual general meeting

19. No company incorporated or registered under the Companies Act (Cap. 486), and no unincorporated body of persons shall be entitled to become member of a co-operative society, except with a written authorization through a resolution by a general meeting of that co-operative society.

Membership of cooperative society

20. No member of a co-operative society shall exercise any of the rights a member unless he has made such payment to the society in respect of membership, or has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society.

Limitation of membership to one society

21. No person shall be a member of more than one co-operative society with unlimited liability and, no person shall be a member of more than one co-operative society having the same or similar object:

Provided that a person who—

- (a) is a member of a co-operative society; and
- (b) carries on business on land or at premises outside the area of operation of that co-operative society, may be a member of a co-operative society in whose area of operation that land or those premises are situate, notwithstanding that its objects are the same as or similar to those of the first-mentioned society.

Voting rights of members

22. Each member of a co-operative society shall have one vote only in the affairs of the society, irrespective of the number of shares the member holds:

Provided that a co-operative society which is a member of a co-operative union or an apex society shall have as many votes as may be prescribed by the by-laws of the co-operative union or apex society of which it is a member, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

Transfer of shares

23. (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding as are laid down in section 15.

(2) In the case of a co-operative society registered with unlimited liability, a member shall not transfer or charge any share held by him or his interest in the capital of the society or any part thereof, unless—

- (a) he has held such share or interest for at least one year; and
- (b) the transfer or charge is in favour of the society or a member of the society.

Rights of members

24. A member of a co-operative society shall have the right to—

- (a) attend and participate in decisions taken at all general meetings of the society and vote;
- (b) be elected to organs of the society, subject to its by-laws;
- (c) enjoy the use of all the facilities and services of the society subject to the society's by-laws;
- (d) all legitimate information relating to the society, including: internal regulations, registers, Minutes of general meetings, supervisory committees, reports, annual accounts and inventories, investigation reports, at the society's head office.

Member's rights *vis-a-vis* the co-operative society

25. A member of a co-operative society shall have the obligation to—

- (a) observe and comply with all the society by-laws and decisions taken by the relevant organs of the co-operative society in accordance with the by-laws of that society;
- (b) buy and pay up for shares or make any other payments provided for in the by-laws of the society; and
- (c) meet the debts of the society in case of bankruptcy in accordance with this Act and the by-laws of the society.

PART VI—DUTIES OF CO-OPERATIVE SOCIETIES

Registered address of co-operative society

26. Every co-operative society shall have a registered address to which notices and communications may be sent and shall send to the Director notice of every change of address within one month of the change.

Society to keep a copy of the Act and by-laws at registered office

27. Every co-operative society shall keep a copy of this Act and of the rules made thereunder and of its own by-laws and a list of its members (excluding details of nominees and shareholdings) at its registered office and shall keep them open for inspection by any person, free of charge, at all reasonable times during business hours.

Estimates of income and expenditure

28. For each financial year, the Committee of a co-operative society shall cause to be prepared estimates of the society's income and

expenditure including recurrent and capital estimates for approval by the general meeting at least three months before the end of the preceding financial year.

Account and audit

29. (1) Every co-operative society shall keep proper accounts which shall—

- (a) be prepared in accordance with International Accounting Standards;
- (b) reflect the true and fair state of the co-operative society's affairs; and
- (c) explain the co-operative society's transactions including—
 - (i) all sums of money received and paid by the co-operative society and the reasons thereto;
 - (ii) all sales and purchases of goods and services by the co-operative society; and
 - (iii) all assets and liabilities of the co-operative society.

(2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.

(3) It shall be the duty of every co-operative society to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4).

(4) The auditor shall be appointed at the annual general meeting from a list of auditors approved by the Director, in consultation with the Institute of Certified Public Accountants of Kenya.

(5) Where at an annual general meeting no auditor is appointed, the Director may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society.

(6) The accounts referred to in subsection (3) shall—

- (a) conform with International Financial Reporting Standards;
- (b) include the following records—
 - (i) a balance sheet;
 - (ii) an income and expenditure account; and
 - (iii) a cash flow statement;

- (c) be approved by the Committee; and
- (d) be authenticated by at least three Committee members including the chairperson of the co-operative society.

(7) No auditor shall present the audited accounts of a co-operative society to the members at a general meeting unless the accounts have previously been submitted to the Director in such form as may be prescribed.

(8) The auditor shall submit the audited accounts to a general meeting within four months after the end of the accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted—

- (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and

- (b) in accordance with the co-operative society's objectives, by-laws and any other resolutions made by the society at a general meeting.

(9) The auditor shall have the right to—

- (a) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor;

- (b) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive;

- (c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit—

- (i) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs;

- (ii) require the production of any book, document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities;

- (iii) demand such other information or explanation from any officer of the co-operative society as may be necessary for the performance of his duties as an auditor.

(10) Every co-operative society shall, at such time and in such form as may be prescribed, file with the Director an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.

(11) Where a co-operative society fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, members of the Committee shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Director is satisfied that the failure was due to circumstances beyond their control.

(12) For the purposes of this section, “International Accounting Standards” and “International Financial Reporting Standards” means the standards established by the Institute of Certified Public Accountants of Kenya.

Production of books and other documents

30. Any officer, agent, servant or member of a co-operative society who is required by the Director, or by a person authorized in writing by him to do so shall, at such place and time as the Director may direct, produce all moneys, securities, books, accounts and documents belonging to or relating to the affairs of such society which are in the custody of such officer, agent, servant or member.

PART VI—MANAGEMENT OF CO-OPERATIVE SOCIETIES

General meetings

31. (1) The supreme authority of a co-operative society shall vest in the members who shall have the right to attend and vote in all general meetings.

(2) Subject to subsection (3) a co-operative society shall hold an annual general meeting within four months after the end of each financial year.

(3) In the first year after registration of a co-operative society, the general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall—

- (a) elect the co-operative society’s office bearers for the ensuing year;